

## **REMARKS**

Claims 15, 24 and 35 have been amended. Claims 1-44 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

### **Section 112, Second Paragraph, Rejection:**

The Office Action rejected claims 24-34 under 35 U.S.C. § 112, second paragraph as failing to comply with the enablement requirement. The Examiner suggests that the claim language be amended to clarify that the communications from the controller to the source node are not being sent via the independent communications paths that connect the source and destination nodes. The claim language has been accordingly amended.

### **Section 102(e) Rejection:**

The Office Action rejected claims 1, 2, 10, 13, 15, 16, 22, 35, 41 and 44 under 35 U.S.C. § 102(e) as being anticipated by D'Errico.

Claim 1 recites, in pertinent part, “wherein each preference indicates that a corresponding communication path should be chosen at least once when sending the communications”.

D'Errico, at column 3, lines 55-65, states:

In view of the foregoing, in one embodiment of the present invention, preference is given to distributing each I/O operation to the one of the multiple system paths that is determined to be the shortest path for that I/O operation, i.e., the path is selected over which the I/O operation is expected to complete most quickly. The selection of a path for an I/O operation is based upon the status of these previously assigned I/O operations queued to the multiple system paths at the time the selection is made. Applicants have developed a number of different criteria that can be employed for selecting the shortest path for a particular I/O operation.

Therefore, D'Errico neither teaches nor suggests “each preference indicates that a corresponding communication path should be chosen at least once” as recited in claim 1. D'Errico does mention a round robin scheme in which each path would be chosen, but the round robin scheme does not include any preferences. D'Errico's scheme that include some sort of preference does not ensure that each path is chosen at least once. The Applicants believe that for at least this reason, claim 1 and all claims depending therefrom patentably distinguish over the cited prior art. Amended claims 15, 24 and 35 include features, which are similar to those recited in claim 1. Therefore, these claims along with all their dependent claims are likewise believed to patentably distinguish over D'Errico.

#### **Section 103(a) Rejection:**

The Office Action rejected claims 7, 8, 17, 18, 19, 36, 37 and 38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over D'Errico and Cisco.

Claim 8 recites, in pertinent part “wherein a number of times that one of the communication paths is selected relative to the other communication paths corresponds to a number of entries for that communication path in the routing table”.

The Applicants find no teaching or suggestion of the above-cited limitation in either D'Errico or Cisco. Further, as to the Examiner's assertion that this limitation is inherent to some combination of D'Errico and Cisco, Applicants assert that D'Errico and Cisco taken singly or in combination do not teach or suggest or inherently require multiple entries for a single path.

#### **Double Patenting Rejection:**

The Office Action rejected claims 1, 15, 24 and 35 under the judiciary created doctrine of obviousness-type double patenting as being unpatentable over claims 9, 19, 28 and 40 of co-pending Application No. 09/850,909. A terminal disclaimer to obviate

the double patenting rejection over claims 1, 15, 24 and 35 has been filed along with this response. Accordingly, Applicant respectfully requests removal of the double patenting rejection of claims 1, 15, 24 and 35.

**Claims Objected To But Otherwise Allowable:**

Claims 3-6, 9, 11, 14, 20, 23, 39, 42 and 43 were objected to as being dependent upon a rejected base claim but otherwise allowable if rewritten in independent form. As such, Applicants assert that claims 3-6, 9, 11, 14, 20, 23, 39, 42 and 43 are allowable as depending from patentable distinct base claims. Applicants therefore respectfully request allowance of claims 3-6, 9, 11, 14, 20, 23, 39, 42 and 43 as currently pending.

## CONCLUSION

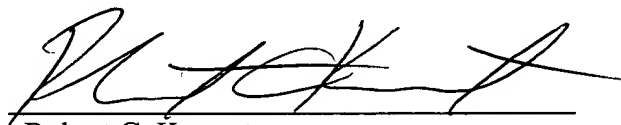
Applicants submit the application is in condition for allowance, and notice to that effect is respectfully requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicants hereby petition for such extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5181-75400/RCK.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☐ Petition for Extension of Time
- ☐ Notice of Change of Address
- ☐ Fee Authorization Form authorizing a deposit account debit in the amount of \$  
for fees (      ).
- ☒ Other: Terminal Disclaimer

Respectfully submitted,



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